

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SIDNEY GORDON and JEFFREY TAUBER,

Plaintiffs,

v.

SONAR CAPITAL MANAGEMENT LLC;
NOAH FREEMAN; NEIL DRUKER;
PRIMARY GLOBAL RESEARCH, LLC; SONAR
PARTNERS, LP; SONAR INSTITUTIONAL
FUND, LP; SONAR OVERSEAS FUND, LTD.;
and JOHN AND JANE DOES 1 THROUGH 100,

Defendants.

11-cv-09665 (JSR)

AFFIDAVIT OF MARK J. HYLAND

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

Mark J. Hyland, being duly sworn, deposes and says:

1. I am a member of Seward & Kissel, LLP, counsel for Defendants Sonar Capital Management, LLC (“Sonar”) and Neil Druker (“Druker” and together the “Sonar Defendants”). I submit this affidavit in support of the Sonar Defendants’ Motion to Dismiss the Second Amended Class Action Complaint pursuant to Fed. R. Civ. P. 12(b)(6).

2. By “bottom line” order (“Bottom Line” Order”) dated February 8, 2013, the Court dismissed the Amended Class Action Complaint (“Amended Complaint”) filed April 24, 2012. [Docket No. 63]. By Opinion and Order dated June 12, 2013 (“Opinion”), the Court explained the reasons for its February 8 ruling. [Docket No. 76]. True and correct copies of the Court’s “Bottom Line” Order and Opinion are attached as Exhibits A and B respectively.

3. Pursuant to a Stipulation and Agreement of Partial Class Settlement as to Noah Freeman (“Freeman”) dated January 18, 2013 (“Stipulation”), Freeman was required to

provide all non-privileged documents and answer all questions relating to the allegations in the complaint. *See* Stipulation at ¶ 2.8. A true and correct copy of the Stipulation and Agreement of Partial Class Settlement [Docket No. 57] is attached as Exhibit C.

4. On July 19, 2013, Plaintiffs served the Sonar Defendants with a copy of the Second Amended Class Action Complaint (“SAC”). [Docket No. 79].

5. In connection with his application to be appointed Lead Plaintiff, Plaintiff Jeffrey Tauber (“Tauber”) submitted a Certification dated March 2, 2012 and attached an exhibit purporting to list his transactions in Sigma stock during the putative Seller Class Period identified in the Amended Complaint, July 13 through November 28, 2007 (the “Certification”). A true and correct copy of Tauber’s Certification [Docket No. 27-1] is attached as Exhibit D.

6. Tauber’s Certification reveals that he was a net purchaser of Sigma shares, ending the putative Seller Class Period with 15,790 more shares than when the Seller Class Period began. A chart summarizing Tauber’s transactions based on the information he provided in his Certification is set forth below:

Date	Shares Sold	Shares Bought	Net Shares
July 19		9,000	9,000
July 30	9,000		0
August 16	18,000	19,345	1,345
October 25	15,100		(13,755)
November 14		19,545	5,790
November 15	5,300	5,300	5,790
November 23		5,000	10,790
November 26		5,000	15,790
Total	47,400	63,190	

7. Taking the average price at which Tauber asserts he purchased the 15,790 Sigma shares that he held at the end of the putative Seller Class Period (53.19) and the average of the high and low prices at which Sigma shares traded on November 29, 2007, the day after the

putative Seller Class Period ended (66.17), Tauber stood to realize a profit of approximately \$205,000 on the 15,790 shares he held as of November 29, 2007.

8. In addition, Tauber's trading records reveal that he engaged in frequent, multidirectional trades on the same day. For example, on July 30, Tauber made nine trades; on August 16 he both bought and sold, making 18 trades; on October 25 he made a staggering 76 trades; on November 14 he made five trades; and on November 15, he bought and sold, making three trades.

9. Tauber also transacted a significant volume and dollar value of shares when he traded Sigma stock. As noted above, Tauber frequently traded thousands of shares at a time. Based on the prices at which he claims to have traded Sigma shares, Tauber transacted between approximately \$270,000 and over \$1 million each day he traded during the Seller Class Period.

10. Attached as Exhibit E are true and correct records obtained from Bloomberg, pursuant to Bloomberg's subscription service, showing the opening, high, low and closing prices at which Sigma shares were traded during regular trading hours on July 19, July 30, August 16, October 25, November 14, November 15, November 23 and November 26, 2007, the dates on which Tauber asserts that he traded Sigma stock during the Seller Class Period. With one exception (his sale on August 16, 2007, which was completely offset by a purchase the same day), none of the prices at which Tauber alleges he transacted in Sigma stock fall within these ranges. The chart below summarizes these inconsistencies:

Transaction Date	Number of Shares Purchased/(Sold)	Tauber's Price Range	Bloomberg Price Range (Low – High)	Difference ¹
July 19	9,000	31.06	31.78 - 32.76	(0.72) – (1.70)
July 30	(9,000)	30.03 - 30.06	31.00 - 33.20	(0.97) – (3.14)
August 16	19,345	33.06 - 33.45	29.30 - 31.93	3.76 – 1.52
August 16	(18,000)	31.56	29.30 - 31.93	n/a
October 25	(15,100)	52.06 - 52.76	53.75 - 55.22	(1.69) – (2.46)
November 14	19,545	54.20 – 55.76	57.19 – 59.38	(2.99) – (3.62)
November 15	5,300	52.06 – 52.56	55.60 - 58.41	(3.54) – (5.85)
November 15	(5,300)	52.11	55.60 - 58.41	(3.49) – (6.30)
November 23	5,000	54.06	49.91 – 53.53	4.15 – 0.53
November 26	5,000	51.06	52.50 – 54.91	(1.44) – (3.85)

11. Tauber's trading records reveal that on August 16 and November 23, Tauber bought Sigma at prices significantly *higher* than market price. On July 30, October 25, and November 15, he also sold at prices significantly *lower* than market price. In fact, on 113 of his 114 transactions, the prices at which Tauber claims that he purchased and sold Sigma shares are significantly outside of the range of prices at which Sigma shares were traded during regular hours trading on those days, according to publicly available records of stock prices.

12. Attached as Exhibit F are true and correct records obtained from Bloomberg, pursuant to Bloomberg's subscription service, showing the high and low prices at which Sigma shares were traded during after-market and pre-market hours on July 19, July 30, August 16, October 25, November 14, November 15, November 23, and November 26, the dates on which Tauber traded Sigma stock. Again, with the exception of Tauber's August 16 sale, which as noted was completely offset by a purchase the same day, all of Tauber's prices fall well outside even the extended hours trading ranges. The chart below summarizes these inconsistencies:

¹ Prices in parentheses reflect the negative difference between Tauber's execution price range and the market price range.

Transaction Date	Number of Shares Purchased/ (Sold)	Tauber's Price Range	Bloomberg Price Range Pre-Market (Low – High)	Difference ²	Bloomberg After Hours Price Range (Low – High)	Difference
July 19	9,000	31.06	32.19 – 32.28	(1.13) – (1.22)	n/a*	n/a*
July 30	(9,000)	30.03 - 30.06	31.10 – 31.39	(1.07) – (1.33)	32.51 – 33.20	(2.48) – (3.14)
August 16	19,345	33.06 - 33.45	30.00 – 30.83	3.06 – 2.62	31.25 – 31.58	1.81 – 1.87
August 16	(18,000)	31.56	30.00 – 30.83	1.56 – 0.73	31.25 – 31.58	n/a
October 25	(15,100)	52.06 - 52.76	55.20 – 55.35	(3.14) – (2.59)	54.74 – 54.97	(2.68) – (2.21)
November 14	19,545	54.20 – 55.76	57.17 – 57.80	(2.97) – (2.04)	57.75 – 57.95	(3.55) – (2.19)
November 15	5,300	52.06 – 52.56	57.84 – 58.02	(5.78) – (5.46)	56.11 – 56.14	(4.05) – (3.58)
November 15	(5,300)	52.11	57.84 – 58.02	(5.73) – (5.91)	56.11 – 56.14	(4.00) – (4.03)
November 23	5,000	54.06	49.80 – 50.64	4.26 – 3.42	52.05 – 52.70	2.01 – 1.36
November 26	5,000	51.06	52.79 – 53.05	(1.73) – (1.99)	53.10 – 53.26	(2.04) – (2.20)

* There is no data for the after-hours ranges on July 19, 2007, suggesting that no trade activity was recorded by Bloomberg.

13. In the SAC, Plaintiffs purport to identify certain of the Sonar Hedge Fund's transactions in Sigma stock during the putative Seller and Buyer Class Periods. *See* SAC Exs. A, B, C. Plaintiffs allege that, during the period July 13, 2007 to August 21, 2007, the Sonar Hedge Funds purchased 521,600 shares in Sigma and sold 134,130 shares. SAC ¶ 96. Plaintiffs do not, however, identify any Sonar trading activity between August 22 and 28, 2007. In fact, the Sonar Hedge Funds sold 25,000 shares of Sigma on August 27 at a price of \$36.88 per share. On August 28, the Sonar Hedge Funds sold 25,000 shares at \$37.57 per share, 95,000 shares at \$37.52 per share, and 30,000 shares at \$37.10 per share. Thus, the Sonar Hedge Funds sold 175,000 shares worth about \$6.5 million on August 27 and 28, 2007, the two days immediately preceding Sigma's August 29, 2007 public earnings report, which resulted in an immediate substantial increase in the Sigma share price. Had the Sonar Hedge Funds retained those shares and sold them at the closing price on August 30, 2007, the day after the second quarter earnings report, they would have sold the shares for nearly \$7.5 million – approximately \$934,000 more than the sale prices Sonar realized. Attached as Exhibit G are true and correct

² Prices in parentheses reflect the negative difference between Tauber's execution price range and the pre-market and after-market price ranges.

copies of the Sonar Hedge Fund's trading records showing transactions in Sigma for the dates August 27 and 28, 2007. The chart below summarizes the difference between the prices at which Sonar sold on August 27 and 28, 2007 and the prices Sonar could have achieved had it sold those shares on August 30, 2007:

Date	Shares	Sale Price	Total	Aug. 30, 2007 Closing Price	Total if Held	Difference Between Totals at Price Sold and Aug. 30, 2007 Closing Price
August 27, 2007	25,000	36.8812	922,030	42.70	1,067,500	145,470
August 28, 2007	25,000	37.5694	939,235	42.70	1,067,500	128,265
August 28, 2007	95,000	37.5235	3,564,732.50	42.70	4,056,500	491,767.50
August 28, 2007	30,000	37.0994	1,112,982.95	42.70	1,281,000	168,027.05
Total	175,000		6,538,980.45		7,472,500	933,529.55

14. According to an article published by the United States Census Bureau, Nguyen is the 57th most common surname in the United States according to the 2000 Census. See Demographic Aspects of Surnames From Census 2000 (at 5), attached as Exhibit H. According to news reports, Nguyen, a surname linked with the last ruling dynasty of Vietnam, is currently the 13th most popular surname in Australia, and is expected to surpass Smith as the most common surname in Australia's metropolitan areas within the next ten years. A true and correct copy of a Sunday Herald Sun (Australia) article titled *Nguyen the Name* is attached as Exhibit I. In fact, according to Wikipedia (*available at*: <http://en.wikipedia.org/wiki/Nguyen>), 40% of all people of Vietnamese descent have the surname "Nguyen." I realize that a Wikipedia source may not be reliable, but it is referenced for the general point that "Nguyen" is an extremely common name.

15. Tai Nguyen was charged with a single count of wire and securities fraud relating to Abaxis Inc., a biotechnology company, on June 26, 2012. A true and correct copy of the Criminal Information in *USA v. Nguyen*, 12-cr-495 (NRB) (S.D.N.Y) is attached as Exhibit J.

16. Mr. Nguyen filed a sentencing memorandum (“Nguyen Sentencing Memorandum”), to be considered by the Court in advance of his sentencing, on March 7, 2013. A true and correct copy of the Nguyen Sentencing Memorandum is attached as Exhibit K.

17. Mr. Nguyen and his sister, ThanhHa Bao, were named as defendants in a civil complaint filed by the SEC on April 8, 2013 entitled *SEC v. Nguyen and Bao*, attached as Exhibit L.

18. A true and correct copy of the Amended Complaint in *SEC v. Longoria, et al.*, referenced in the SAC in this action, is attached as Exhibit M.

19. Freeman entered into a final judgment with the SEC resolving the Amended Complaint in *SEC v. Longoria, et. al.*, on December 23, 2011. In the final judgment, Freeman does not address any of the factual allegations in the SEC’s Amended Complaint. A true and correct copy of the Freeman Final Judgment is attached as Exhibit N.

20. Early on October 11, 2006, Robert W. Baird & Co. issued an analyst report (the “October Baird Report”) reporting that Sigma would show increased revenues based upon increased shipments of set-top boxes that used Sigma’s SoC chips, immediately driving up the price of Sigma shares. A true and correct copy of the October Baird Report is attached as Exhibit O and a true and correct copy of an article from TheFlyOnTheWall.com released at 6:28 am on October 11, 2006 and referring to the October Baird Report is attached as Exhibit P.

21. On October 12, 2006, the Associated Press reported that an analyst at American Technology Research (“Amtech”) announced that he was initiating a “buy” rating on

Sigma stock. A true and correct copy of an Associated Press article detailing the Amtech announcement is attached as Exhibit Q.

22. On August 28, 2007, Barron's reported that an analyst at Amtech disclosed that Sigma "apparently has won a big order from Motorola for IPTV chips which is not reflected in current expectations" and stated that the company should "beat expectations for the [second] quarter . . . and to raise guidance for the [third] quarter." A true and correct copy of a Barron's article detailing the Amtech announcement is attached as Exhibit R.

23. On August 29, 2007, Sigma Designs released its second quarter earnings via a press release and held a conference call between Sigma's management and investors. A true and correct copy of the August 29, 2007 press release is attached is Exhibit S and a true and correct copy of the transcript of the August 29, 2007 Earnings Call is attached as Exhibit T.

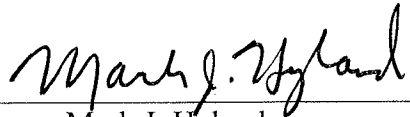
24. On November 28, 2007, Sigma Designs reported via press release that its net revenues for the third quarter were \$66.2 million. With respect to the fourth quarter, Sigma stated that, "[t]he Company expects a continued increase in demand for its products with 10% to 15% growth in net revenues for the fourth quarter compared to the previous quarter." A true and correct copy of the November 28, 2007 press release is attached as Exhibit U.

25. On March 12, 2008, Sigma Designs announced via a press release that its net revenues for the fourth quarter were \$76.4 million, up 15% from the third quarter. A true and correct copy of the March 12, 2008 press release is attached as Exhibit V.

26. Attached as Exhibit W is a true and correct copy of a screenshot from the Bloomberg subscription service, showing earnings reported by Sigma for the relevant period and the earnings expected to be reported per market consensus estimates. Information reflecting Sigma's March 12, 2008 announcement, reflecting the fourth quarter earnings, appears at line

36. The “Reported” revenues, reflecting the actual revenues reported by the company, were \$76.398 million, while the “Expected” revenues, reflecting the market consensus estimate, were \$75.208 million.

27. Sigma Designs has strong Vietnamese connections. Sigma has been touted as the first company led by a Vietnamese national to be listed on NASDAQ. *See Exhibit X (Vietnam: Overseas businesses to introduce investment opportunities in Vietnam, Thai News Service, August 1, 2007).* Sigma has an office in Ho Chi Minh City, Vietnam (*see Exhibit Y, Roar of new Asia tiger: Vietnam, Seattle Times, August 6, 2007*) and in 2011 announced a joint venture with a company located in Vietnam (*see Exhibit Z, US, Vietnam firms form a joint venture, April 25, 2011*). Among its senior management, there currently are at least two individuals with the surname “Nguyen” – Hao Nguyen, Director Advanced Technology, and Jimmy Nguyen, Senior Director, Information Technology. *See Exhibit AA, which is a true and correct copy of the “InsideView” website listing Sigma Designs employees, available at <http://www.insideview.com/directory/sigma-designs-inc> (August 30, 2013).* And, during the relevant period, Sigma employed a Hung Nguyen as general manager and Vice President of Wireless Products Division, and a Julien Nguyen served on Sigma’s Board of Directors. *See Exhibits BB (ChipX Announces Technical Advisory Board of Prestigious Industry Veterans, Market Wire, June 11, 2007) and CC (Sigma Director Exercises Options, Associated Press Financial Wire, Jan. 9, 2008).*


Mark J. Hyland

Sworn to before me
August 30, 2013


Notary Public